IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 1916 OF 2005

1. Sou Jayashri Jairam Sutar)
Age 28 years, Occu.-Household,)
)
2. Miss Jagruti Jairam Sutar,) PETITIONERS
Age 5 years, Occu.- Education)
)
Both resident of Taliye,)
Sutarkond, Taluka Mahad,)
District Raigad.)

Vs.

Shri Jairam Ramchandra Sutar)
Age 35 years, Occu.- Agriculture
Carpenter, Resident of Sakhar-) RESPONDENT
Govele (Sutarkond), Taluka -)
Poladpur, District - Raigad.)

Mr. Nilesh S. Patil, advocate for petitioner

Ms. R. M. Gadhvi, APP for Respondent-State.

Mr. S. J. Salvi & S. J. Patwardhan for
Respondent.

CORAM: S. R. DONGAONKAR, J.
DATE : MARCH 8, 2006.

ORAL JUDGMENT:

1. Heard Mr. Nilesh S. Patil, the learned counsel for petitioner and Mr. Salvi & Mr. S. J. Patwardhan, the learned counsels for respondent.

2. By this petition, the petitioners have challenged the order passed by the learned 2nd Ad Hoc Assistant Sessions Judge, Raigad, Alibag, in

Cri. Misc. Revision Application No. 106 of 2004, dated 7th March, 2005, by which the Revision Application of respondent was allowed, by setting aside an order of the learned Judicial Magistrate, F.C.Mahad in Cri. Misc. Appln. No.85 of 2003, dated 6-5-2004, by which respondent was ordered to pay monthly maintenance @ Rs.1250/- to petitioner no.1 and @ Rs. 1000/- to petitioner no.2, from the date of that order.

3. It may be stated that present petitioners, who are wife and daughter of the respondent had preferred maintenance proceeding, bearing Cri. Misc. Appln. No. 35 of 2001, in which maintenance @ Rs. 500 per month in favour of the wife and Rs.300 per month in favour of the daughter was granted. Thereafter, the petitioners preferred an application under Section 127 of Code of Criminal procedure for enhancement of maintenance and that Application was allowed by the learned Judicial Magistrate, F.C. Mahad, by his order 6-5-2004.

4. When the Revision Application was preferred against that order by the respondent, that petition was allowed by the learned 2nd Ad Hoc

Assistant Sessions Judge, Raigad Alibag, by maintaining the earlier order of the learned Magistrate regarding grant of maintenance.

5. While challenging this order, the learned Counsel for the petitioners has submitted that the order of 2nd Ad Hoc Assistant Sessions Judge Raigad is incorrect. The learned counsel for petitioner has further submitted that the respondent has shifted his residential house to rented one and therefore there is enhancement in his income. So, the learned Judge should have rejected the Revision Petition, by maintaining the order of the learned Magistrate of enhancing the maintenance.

6 The learned counsel for the respondent has contended that there is no change in circumstances, nor any enhancement in the income of the respondent. Further he has to maintain himself, his parents, two kids, and therefore, the order of the learned 2nd Ad Hoc Assistant Sessions Judge Raigad, in the Revision Petition is correct.

7. I have gone through the reasons on which the learned 2nd Ad Hoc Assistant Sessions Judge

has passed his order.

8. It is clearly seen that two kids are residing with respondent. It is also stated in the judgment that the applicant/wife has not adduced any oral or documentary evidence to show that there is any enhancement in the earning of the opponent.

9. The respondent has also stated that he is doing labour work and maintaining himself, his kids and old parents. Therefore, unless there is sufficient evidence on record to show that his earnings were increased or his liabilities are decreased, there cannot be any material change in the circumstances, which warrant modification of the order of the learned Magistrate, which is passed on 6th May 2005, in the year 2003 when this application under Section 127 Cr.P.C. was filed.

10. Hence, I do not find any merit in this petition and it is dismissed. However, with the observation that the petitioner shall be entitled to move an application for enhancement of maintenance in the lower court, if necessary, if the circumstances so warrant, later.

11. No orders as to costs.

(S. R. DONGAONKAR, J)